**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Arbitration Case No.132 of 2006**

**DATE OF DECISION: March 13, 2007**

**BABA RANGI RAM PVT. LTD.**

**.....PETITIONER**
**through Mr. Raman Mahajan,**
**Advocate.**

**VERSUS**

**UNION OF INDIA AND OTHERS.**

**.....RESPONDENTS**
**through Mr. Ashwani Bansal**

**CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE**

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

**VIJENDER JAIN, CHIEF JUSTICE (ORAL)**

It has been contended before me by the learned counsel for the petitioner that the agreement contained in Arbitration Clause-70, is as follows:-

Clause 70 :-

*" All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an serving officer having degree in Engineering or equivalent or having*

*passed final/direct final examination of Sub Division II of Institution of Surveyor (India) recognized by the Govt. of India to be appointed by the authority mentioned in the tender documents.*

*Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos. 55,56 and 57 hereof.*

*Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52,53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.*

*Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.*

*If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.*

*The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.*

*The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.*

*The Arbitrator may, from time to time with the consent of the parties, enlarge, the time with the consent of the parties, enlarge, the time for making and publishing the*

*award.*

*The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters, referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.*

*If the value of the claims or counter claims in an Arbitration reference exceeds Rs. One lakh, the Arbitrator shall give reasons for the award.*

*The Arbitrator shall give reasons for the award in each and every case irrespective of the value of claims or counter claims.*

*The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.*

*The Award of the Arbitrator shall be final and binding on both parties to the Contract."*

Counsel for the petitioner has contended that the contract was completed on 15.05.1994 and final bill was passed and payment was made on 26.04.1998, which was received under protest.

On the other hand counsel for the respondents contended that no protest was made by the petitioner at the time of acceptance of the final payment, therefore, the claim in this petition is a dead claim. In this regard learned counsel for the respondent relied upon the following judgments:-

1. (1994) Supp (3) SCC 126 **P.K.Ramaiah** and Company v. CMD, NTPC .

2. (1994) Supp. (2) SCC 545(II) K.Ramachandra Rao v. UOI.

3. Tuli Construction v. UOI, Punjab and Haryana High Court CR No.1690 of 1991 decided on 23.03.2005.

4. (2004) 2 SCC 663 Chairman NTPC v. Reshmi Construction

5. (2003) 8 SCC 154 (Para 9) Bharat Cooking v. Annapurna Construction.

6. (2000) 10 SCC 178 Jayesh Engineering Works v. New India Assurance Co. Ltd.

7. (2000) 8 SCC 1 UOI v. Popular Builders

It is not in dispute that payment of the final bill was made on 26.04.1998. The petitioner invoked the arbitration clause on 16.02.2001, which was within the stipulated period of limitation. However, the respondent did not supply the vacancy. Therefore, the petitioner filed the present petition under Section 11 of the Arbitration Act on 27.08.2003.

I have heard the arguments of the learned counsel for the parties.

So far as the question raised by the counsel for the respondent with regard to non registration of protest at the time of receipt of final payment, this question has already been dealt with by me at length in case **Chiranji Lal Gupta v. Union of India and others** decided on 01.03.2007 . The judgments in **Nathani Steels Ltd. v. Associated Constructions, 1995 , 1995 Suppl. (2) SCC 324** and **M/s Ambika Construction v. Union of India** 2007(1) RCR (Civil) 257 were also considered in that case. It shall

be always open for the petitioner , who has invoked the arbitration clause regarding non payment of certain amounts, to seek a reference for adjudication by the Arbitrator.

As arbitration clause is admitted, therefore, I appoint Justice G.R.Majithia (Retired Judge of Maharashtra High Court, Mumbai) as sole Arbitrator to adjudicate the dispute between the parties. The Arbitrator shall fix his own fee. A copy of this order be sent to the Arbitrator.

Parties to appear before the Arbitrator on 05.04.2007 at 4.00 PM at the residence of the Arbitrator.

Petition stands disposed of.

(**VIJENDER JAIN)**
**CHIEF JUSTICE**

**March 13,2007**
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